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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ETHAN COHAN, Plaintiff and Appellant, v. CITY OF LOS ANGELES et al., Defendants and Respondents.	B170640 (Los Angeles County Super. Ct. No. BS058445)

APPEAL from a judgment of the Superior Court of Los Angeles County. Dzintra Janavs, Judge. Affirmed.

Ethan Cohan, in pro. per., for Plaintiff and Appellant.

Rockard J. Delgadillo, City Attorney, Claudia McGee Henry, Assistant City Attorney, and Kim Rodgers Westhoff, Deputy City Attorney, for Defendants and Respondents.

* * * * * *

A Los Angeles Police Department (LAPD) Board of Rights found appellant Ethan Cohan guilty of three counts of misconduct—failing to obtain medical treatment for a suspect in custody, failing to report officer misconduct, and making false and misleading statements to investigators. A majority of the three-person board recommended that appellant be removed from duty as a police officer. The chief of police accepted the recommendation and terminated appellant's employment. Appellant petitioned for administrative mandamus to compel the City of Los Angeles and its chief of police to reinstate him as a police officer. The trial court granted the petition as to the count of failing to obtain medical treatment for a suspect in custody, but denied the petition on the other counts. The court issued a writ of mandate directing the board to reconvene for a reconsideration of the penalty. The reconvened board again recommended that appellant be discharged, and the chief of police accepted the recommendation. Appellant filed a supplemental petition for writ of mandate, which the trial court denied. On appeal, appellant contends the charges against him are not supported by substantial evidence and that the penalty of discharge denotes an abuse of administrative discretion. Because we find no merit in appellant's contentions, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The February 26, 1998 Incident

Appellant began his employment as a police officer with the LAPD in 1993, and was assigned to the gang enforcement unit (CRASH) of the Rampart Division. At the time of the incident appellant had been working with a confidential informant, who was an admitted gang member, and he had asked his fellow officers to let him know if they saw the informant. On the evening of February 26, 1998, Officers Hewitt and Lujan detained the informant and his friend, Eduardo Hernandez, at a tattoo shop, handcuffed them and took them to Rampart Division. Officer Lujan informed appellant, who was at the station, that his informant was upstairs, where two interview rooms were located off the detective workstation area.

Appellant went to the second floor and opened the door to one of the interview rooms, where he saw Hernandez. Appellant closed the door and went to the next interview room. He opened the door and saw the informant, whose hands were handcuffed behind his back. Appellant closed the door and verified with the other officers that the informant was not going to be booked. Appellant then reentered the room, which was small and windowless, and immediately noticed that the informant was sweating and breathing heavily and that his face was red.

When appellant asked the informant what was wrong, the informant responded that he was upset because he was going to be booked for doing nothing. It is undisputed that the informant did not tell appellant about an assault at that time, but he later alleged that Officer Hewitt had assaulted him in the interview room. It is also undisputed that prior to appellant's entry into the room, the informant vomited blood onto the floor next to his chair that a left a stain approximately 10 to12 inches in length and width.

The informant asked appellant to remove the handcuffs. After retrieving the handcuff key and removing the handcuffs, appellant told the informant to try to calm down and relax and to remove his sweatshirt. Underneath his sweatshirt, the informant was wearing a thermal shirt and some T-shirts. Appellant repeatedly asked the informant what was wrong, but the informant denied that anything was wrong and stated that he might have asthma. Appellant also repeatedly offered to get medical assistance for the informant, but he declined. Appellant brought the informant downstairs and gave him a soda. The informant's physical condition improved slightly and his breathing became more normal. Appellant told him he was free to go and escorted him outside the station.

Appellant separately asked Officers Hewitt and Lujan what was wrong with the informant, and each denied that anything was wrong. When appellant went back upstairs briefly, he saw Hernandez in the lobby area tying his shoelaces. Appellant made casual conversation with Hernandez so that he would not suspect that appellant had any relationship with the informant. Hernandez later testified that appellant threatened "to get" him and told him to "get the fuck out of here."

After leaving the station, the informant vomited twice as he walked along the sidewalk. He walked back to the tattoo parlor, where he told the owner that he had been assaulted by Officer Hewitt. That same evening, Hernandez took the informant to a hospital emergency room, where the informant told security guards and a physician that he had been assaulted by an officer. A police sergeant then met with the informant and took his statement and some photographs of his body.

The following day, February 27, 1998, appellant learned at the police station that a complaint had been filed against Officer Hewitt and that an unidentified male officer, possibly Officer Stepp, was being identified as having released the informant. That same day, the informant paged appellant and told him that "something did happen" and that he had talked to a sergeant and an attorney about it. Appellant told the informant not to say anything further about it to him. Appellant then left a message for Sergeant Hoopes, who used to work in the CRASH unit. They played phone tag and did not actually speak until three or four days later. At that time, appellant informed Hoopes that he had been the one to release the informant and told him what he had seen on the night of the incident.

The informant was interviewed again on February 27. He again stated, as he had when making his initial statement, that he had pointed out the bloodstain on the floor to appellant, who responded, "Oh, shit."

The Investigation

On September 2, 1998, Detectives Poole and Cid, who were part of an Internal Affairs Robbery/Homicide task force investigating the criminal charges against Officer Hewitt, interviewed the informant at his attorney's office. Contradicting his earlier statement, the informant stated that he had not pointed out the bloodstain on the floor to appellant and that he did not think appellant had seen it. At a follow-up interview, Detective Poole confronted the informant with tapes of his prior interviews. The informant then admitted that his earlier statements about appellant seeing the blood were correct and that he had just wanted to protect appellant.

On September 2, appellant contacted Detective Poole and arranged to meet with him. Appellant agreed to be interviewed without an attorney or representative. On September 3, 1998, Detectives Poole and Cid interviewed appellant for five or six hours. It was undisputed that Detective Poole had an aggressive interview style, repeatedly banging his fists on the table and raising his voice. During this interview, appellant stated that he did not see any blood in the interview room on the night of February 26, 1998. Appellant also stated that he did not see Hernandez in the interview room that night, but, rather, in the lobby on the second floor. Following the interview, Detective Cid suggested that appellant go home, relax and think things over to see if he could think of anything else.

The following day, September 4, appellant contacted the detectives again to state that he had been thinking things over as directed, and that he remembered seeing Hernandez first in the other interview room. Specifically, appellant stated: "It's not that yesterday I didn't tell you it or intentionally left it out, but it's that as I had time to think about it, I was able to recollect a little better. And the first thing is that when I went up there, the first door I opened was the other interview room. So I did see Hernandez, shut the door, then found [the informant] in the other room. [¶] Then after I spoke – then later on is when I saw Hernandez outside tying his shoelaces in the lobby like you – like I stated yesterday." Detective Poole then stated: "Okay. Cleared that up."

The Charges

Appellant was charged with six counts of misconduct: (1) threatening Hernandez, (2) being discourteous to Hernandez, (3) failing to obtain proper medical treatment for an ill or injured suspect in custody, (4) failing to notify a supervisor after becoming aware that misconduct had occurred, (5) failing to disclose the identity of an informant to his commanding officer, and (6) making false and misleading statements on September 3 and 4, 1998 to Detectives Poole and Cid during an official investigation. Appellant was taken off the payroll and was ordered to appear before a board of rights.

The First Board of Rights

A three-member panel, consisting of two LAPD captains and a civilian, conducted hearings over a period of nine days, during which 20 witnesses testified, including appellant, and numerous exhibits were admitted into evidence.

At the conclusion of the hearings, the board unanimously found appellant not guilty on the charges pertaining to Hernandez and the charge that appellant failed to disclose the identity of an informant to his commanding officer. A majority of the board found appellant guilty of the remaining three counts—that appellant had failed to obtain medical care for a suspect in custody, that he had failed to report misconduct, and that he had made false and misleading statements to investigators. The civilian board member dissented. The majority specified the basis for its findings, and stated that it specifically did not find credible the informant's testimony that he had not shown the blood to appellant, nor appellant's denial that he saw the blood. The majority also found that appellant's statements regarding the blood and his encounters with Hernandez constituted false and misleading statements to investigators.

For the penalty phase, the board heard the testimony of four character witnesses—a deputy district attorney, a detective and two sergeants—all of whom spoke highly of appellant and his honesty. The board also considered appellant's work history, which it deemed "exemplary," including 46 commendations and "excellent to outstanding" rating reports. The only reprimand appellant had received was for failing to timely appear in court and for making a discourteous remark.[1] Nevertheless, a majority of the board recommended that appellant be removed from his position as a police officer. The majority noted that appellant waited to report the incident until after hearing the informant had made a complaint and found appellant's willingness to come forward to

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[1] The "discourteous" comment appellant made was to a deputy city attorney that "'this was a bullshit case, and [the defendant] should never have been arrested.'" The defendant was being prosecuted for interfering with the arrest of his friend. It was appellant's opinion that the defendant was not deliberately interfering, but that his actions were the result of being intoxicated.

investigators to be self-serving. The majority found that appellant had "neglected [his] duty as a police officer and the Law Enforcement Code of Ethics." The civilian board member dissented, finding that at most appellant was guilty of poor judgment, and she recommended that he receive a penalty consisting of a five percent reduction of pay for a period of six months or five days' suspension, whichever is less. The chief of police accepted the majority's recommendation and appellant was discharged effective March 28, 1999.

The First Mandamus Proceeding

Appellant filed a petition for peremptory writ of mandate with the trial court, which respondents opposed. The trial court exercised its independent judgment and on January 2, 2001, the court entered judgment granting in part and denying in part the petition. On the count of failing to obtain medical care, the court found that the administrative finding of guilty was not supported by the weight of the evidence; on the count of failing to report misconduct, the court found the administrative finding of guilty was supported by the evidence; on the count of making false and misleading statements to investigators, the court found that the guilty finding was supported by the evidence "as it relates to the allegation that Petitioner made false and misleading statements to investigators when he denied on September 3, 1998, and then admitted on September 4, 1998, that he had seen Eduardo Hernandez in an interview room," but that the guilty finding as to appellant's denial of seeing blood on the floor was not supported by the evidence. The court issued a writ of mandate directing respondents to set aside their decision of discharge and to reconvene the board of rights "for the purpose of reconsidering an appropriate penalty to be imposed on Petitioner in light of, and consistent with, the Court's findings set forth in the judgment."

The Reconvened Board of Rights

On November 11, 2001, the board of rights reconvened.[2] The board received into evidence the court's judgment, as well as the transcript from the hearing on the writ petition, and reexamined appellant's work history. The majority of the board, based on its "combined 46 plus years of law enforcement experience," recommended that appellant be removed from his position as a police officer. The majority found that the sustained counts "violate[] everything that we as an organization hold dear, our integrity, truthfulness and the need for the public to have confidence in their police department." The civilian board member dissented.

The Second Mandamus Proceeding

Appellant filed a "supplemental" petition for peremptory writ of mandate, contending that the board had abused its discretion in recommending discharge as a penalty. Appellant argued that the board failed to accept and consider an updated definition of "false statement" by the LAPD that would have exonerated him, and that it had imposed a penalty that was overly severe and inconsistent with department policy. The trial court denied the petition and entered judgment on August 4, 2003. In its statement of decision, the court noted that it had remanded the matter for the board "to set aside its decision as to penalty and reconsider penalty—not to set aside or reconsider its findings." The court noted that because the board found that appellant was dishonest and that it did not accept his explanation, the updated definition would not have helped him. The court found that the penalty of discharge was not an abuse of discretion. Appellant filed a notice of appeal from the court's August 4, 2003 judgment.

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[2] The reconvened board consisted of two of the three original members. The presiding captain from the original board had since retired and was replaced by a commander.

DISCUSSION

Appellant, who appears in pro. per., makes two contentions on appeal: (1) there is no substantial evidence to support the two guilty findings that he made a false and misleading statement to investigators and failed to report officer misconduct, and (2) the penalty of discharge was an administrative abuse of discretion.

Notice of Appeal

As an initial matter, we address respondents' contention that appellant's notice of appeal limits his appeal to the second mandamus proceeding, which was directed to the sole issue of whether the penalty imposed was an abuse of discretion. The notice of appeal states only that appellant "appeals from the judgment entered on August 4, 2003." As respondent notes, this judgment was rendered on the "supplemental" petition for peremptory writ of mandate filed after the reconvened board of rights recommended appellant's discharge.

We note that "notices of appeal are to be liberally construed so as to protect the right of appeal if it is reasonably clear what appellant was trying to appeal from, and where the respondent could not possibly have been misled or prejudiced." (*Luz v. Lopes* (1960) 55 Cal.2d 54, 59; accord, *D'Avola v. Anderson* (1996) 47 Cal.App.4th 358, 361.) It is only where the notice clearly and unambiguously evidences an intent to appeal from only part of a judgment or one of two separate appealable judgments or orders that we deem the appeal limited. (*Unilogic, Inc. v. Burroughs Corp*. (1992) 10 Cal.App.4th 612, 624-625; *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 47.)

The parties do not address the issue of whether the January 2, 2001 judgment on the original petition for writ of mandate, which challenged the evidence supporting the administrative guilty findings, was directly appealable. We conclude that it was not. A judgment is a final determination of the rights of the parties. (Code Civ. Proc., § 577.) "'It is not the form of the decree but the substance and effect of the adjudication which is determinative. As a general test, which must be adapted to the particular circumstances

of the individual case, it may be said that where no issue is left for future consideration except the fact of compliance or noncompliance with the terms of the first decree, that decree is final, but where anything further in the nature of judicial action on the part of the court is essential to a final determination of the rights of the parties, the decree is interlocutory.'" (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 698 [finding nonappealable an order denying a petition for writ of administrative mandate that does not dispose of all causes of action between the parties].) To hold otherwise would be contrary to the "'one final judgment' rule, a fundamental principle of appellate practice that prohibits review of intermediate rulings by appeal until final resolution of the case." (*Id*. at p. 697.)

Here, the judgment on the original petition directed the board of rights to set aside its decision to discharge appellant from his employment and to reconvene "for the purpose of reconsidering an appropriate penalty to be imposed on Petitioner in light of, and consistent with, the Court's findings." Because the judgment left undetermined the penalty to be imposed on appellant, the judgment was clearly not a final adjudication of the parties' rights, and it was not directly appealable. As such, appellant could not seek review of the evidence supporting the findings at that time. Although appellant did not designate the earlier judgment in his notice of appeal, nothing in the notice unambiguously limits the appeal to the issue of the penalty imposed. "The strong public policy in favor of hearing appeals on the merits operates against depriving an aggrieved party or attorney of a right to appeal because of noncompliance with technical requirements." (*Moyal v. Lanphear* (1989) 208 Cal.App.3d 491, 497.) We therefore construe the notice as encompassing this earlier judgment. Our determination does not prejudice respondents, who have fully addressed the merits of appellant's arguments.

Standard of Review

The applicable standard of judicial review in a mandamus proceeding depends on the right at issue. Where a fundamental vested right is involved, such as continued employment as a police officer, the trial court exercises its independent judgment.

(*Duncan v. Department of Personnel Administration* (2000) 77 Cal.App.4th 1166, 1173; *Mardesich v. California Youthful Offender Parole Bd*. (1999) 69 Cal.App.4th 1361, 1366-1367.) Under this standard of review, the trial court must independently weigh the evidence and must set aside the administrative decision where the agency's findings are not supported "by the weight of the evidence." (*Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 111; *Duncan v. Department of Personnel Administration, supra*, 77 Cal.App.4th at p. 1174; Code Civ. Proc., § 1094.5, subd. (c).) In exercising its independent judgment, a trial court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 811-812.)

Where no fundamental vested right is involved, the substantial evidence standard applies. The trial court does not reweigh the evidence, but rather reviews the administrative record to determine if the decision is supported by substantial evidence. (*California Youth Authority v. State Personnel Bd.* (2002) 104 Cal.App.4th 575, 584; Code Civ. Proc., § 1094.5, subd. (c).)

Regardless of what test was applied in the trial court, we review the administrative record to determine whether there is substantial evidence to support the judgment. (*Anserv Ins. Services, Inc. v. Kelso* (2000) 83 Cal.App.4th 197, 204; *Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 52-53.) "Substantial evidence has been defined as relevant evidence that a reasonable mind might accept as adequate support for a conclusion. [Citation.] A presumption exists that an administrative action was supported by substantial evidence. [Citation.]" (*Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331, 1340-1341.) In reviewing the evidence, an appellate court must resolve all conflicts in favor of the party prevailing in the superior court and must give that party the benefit of every reasonable inference in support of the judgment. (*Kazensky v. City of Merced*, *supra,* 65 Cal.App.4th at pp. 52-53.)

Substantial Evidence Supports the Guilty Findings

1. Failure to Report Officer Misconduct

A majority of the board of rights found appellant guilty of the following charge: "'On or about February 26, 1998, [appellant] failed to notify a supervisor after becoming aware that misconduct had occurred.'" The board relied on section 3/815.05 of the LAPD Department Manual, entitled "Police Responsibility," which provides: "'When an employee who is not a supervisor becomes aware of possible misconduct by another member of this Department, the employee shall immediately notify a supervisor.'" The majority of the board found that appellant "knew or should have known that misconduct had possibly occurred and that he failed to take appropriate action."

Appellant claims there was no evidence to establish that on February 26, 1998, the date of the incident, he knew that any officer misconduct had occurred. We acknowledge the evidence was undisputed that both the informant and his arresting officers, Hewitt and Lujan, denied any wrongdoing when questioned by appellant on the date of the incident. But appellant admitted to the board that he told Detectives Cid and Poole during their September interviews that it crossed his mind that something had happened to the informant in the interview room. Appellant was obviously concerned enough about the informant's condition that he repeatedly offered to get medical help. Although appellant clarified that it did not occur to him that what had happened was officer misconduct, as opposed to the informant simply being upset, appellant admitted being aware of Officer Hewitt's reputation as "heavy-handed." The inference can certainly be made that while appellant may not have been aware that actual misconduct had taken place, his suspicion of possible misconduct should have at least been aroused.

Moreover, the evidence was undisputed that the day after the incident, appellant did, in fact, become aware that actual misconduct had occurred. Appellant repeatedly testified before the board that he became aware of the misconduct when the informant paged him and told him that something had happened and that he had made a complaint against Officer Hewitt.

Even after hearing from the informant, appellant did not immediately contact his direct supervisor. Instead, he left a message for Sergeant Hoopes, who no longer worked in the CRASH unit. The board noted that in contacting Hoopes, appellant bypassed his own supervisors. Appellant explained that he wanted to discuss the matter with Hoopes because he was concerned about maintaining the confidentiality of the informant and he believed that Hoopes would best know how to do that. But appellant testified that he would have been just as comfortable contacting his direct supervisor, Detective Wessel, and it was only because of the informant's confidential status that he went to Hoopes. But Wessel testified that appellant had told him that he was working with the informant in early 1997, well before the incident. That Detective Wessel already knew about the informant status undermines appellant's explanation. Furthermore, the informant himself had already made a formal complaint. Thus, appellant's explanation that he was trying to protect the informant's identity was significantly discredited.

Because Sergeant Hoopes was not immediately available, several days passed before appellant actually spoke with a supervisor about the incident. Appellant testified that he did not think there was any urgency because the matter was already being addressed via the formal complaint. But under the LAPD department manual, appellant was required to "immediately" report what he knew of possible misconduct. He failed to do this. Under these circumstances, we conclude that substantial evidence supports the finding that appellant failed to immediately report officer misconduct.

2. False and Misleading Statement

Appellant also claims there was no substantial evidence to support the finding of the majority of the board that he was guilty of making the false and misleading statement to investigators that he did not see Hernandez in the interview room on the night of the incident.

The evidence showed that in his September 3, 1998 interview with Detectives Cid and Poole, appellant denied seeing Hernandez in the interview room, claiming only to have seen him in the second floor lobby tying his shoelaces. On September 4, 1998,

appellant contacted the detectives to state that upon further reflection he remembered that he had actually seen Hernandez in the interview room. In his testimony before the board of rights, appellant admitted this sequence of events.

Hernandez testified that appellant opened the door to the interview room where he was seated, peeked inside, laughed and smiled, then closed the door.

Appellant claims that his original statement to the detectives that he first saw Hernandez in the lobby, as opposed to the interview room, was an innocent mistake that was made without any wrongful intent or purpose. But the majority of the board, as the trier of fact, had already found appellant's testimony in other respects not to be credible and apparently did not believe his explanation. In reviewing the record for substantial evidence, we are not at liberty to reweigh the evidence or to make independent credibility assessments. (*Kazensky v. City of Merced, supra,* 65 Cal.App.4th at pp. 52-53; *Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1632-1633.)

Appellant nevertheless claims that he cannot be found to have made a false statement under the LAPD's own definition of false statement. Appellant points to Administrative Order No. 21 of the Office of the Chief of Police, which defines a "false statement" as "any manner of communication, including but not limited to oral, written and electronic, which a Department employee makes when he or she knew or should have known the statement was false at the time it was made or the employee fails to correct the statement upon learning of its falsity." Appellant claims that because he corrected his statement, he cannot be found guilty of making a false statement.

But appellant concedes that Administrative Order No. 21 was not issued until three months after the original board of rights determined his guilt. Although appellant tried to have the order admitted before the reconvened board, that board did not admit it into evidence when deciding his penalty. Even if Order No. 21 were found to apply, as the trial court noted, this order would not have assisted appellant because the board believed that he was being dishonest when he made his original statement to detectives on September 3, and the board did not believe his explanation to detectives on September 4 that he had simply forgotten the truth. Because the majority of the board

sitting as the trier of fact found appellant to be dishonest, and because appellant produced no evidence to dispute this finding other than his own self-serving assertion of honesty, we have no authority to set aside this unfavorable factual determination. (*Kazensky v. City of Merced, supra,* 65 Cal.App.4th at pp. 52-53.)

The Discharge Penalty

Appellant contends that the penalty of discharge was too harsh because the evidence does not support the guilty findings and because it is "out of line" with penalties historically given for the misconduct at issue.

"'It is well settled that the propriety of a penalty imposed by an administrative agency is a matter resting in the sound discretion of the agency and that its decision will not be disturbed unless there has been an abuse of discretion.' [Citation.]" (*Pegues v. Civil Service Com.* (1998) 67 Cal.App.4th 95, 106.) "In reviewing the penalty imposed by an administrative body which is duly constituted to announce and enforce such penalties, '"neither a trial court nor an appellate court is free to substitute its own discretion as to the matter; nor can the reviewing court interfere with the imposition of a penalty by an administrative tribunal because in the court's own evaluation of the circumstances the penalty appears to be too harsh."'" (*Id*. at pp. 106-107.) "However, if the penalty imposed, under all the facts and circumstances, clearly was excessive, this will be deemed an abuse of discretion and the reviewing court is not powerless to act." (*Ibid*.) There is no abuse of discretion when reasonable minds could differ as to the propriety of the penalty. (*Ibid*.)

The Supreme Court has explained: "In considering whether [an] abuse [of discretion] occurred in the context of public employee discipline, . . . the overriding consideration . . . is the extent to which the employee's conduct resulted in, or if repeated is likely to result in, '[h]arm to the public service.' [Citations.] Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence. [Citation.]" (*Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 218; accord, *Kazensky v. City of Merced*, *supra,* 65 Cal.App.4th at p. 53.) Moreover, in

reviewing the exercise of an agency's discretion, we bear in mind the principle that "'courts should let administrative boards and officers work out their problems with as little judicial interference as possible. . . . Such boards are vested with a high discretion and its abuse must appear very clearly before the courts will interfere.'" (*Talmo v. Civil Service Com*. (1991) 231 Cal.App.3d 210, 230; *Landau v. Superior Court* (1998) 81 Cal.App.4th 191, 218.)

We have already determined that substantial evidence supports the board's guilty findings. That leaves only appellant's argument that the penalty was inconsistent with the penalties historically given for the misconduct involved here. Appellant relies on the LAPD's Management Guide to Discipline, dated May 1998, in which the section entitled "Historical Document of Penalties" notes that the penalty for a first offense of neglect of duty in failing to report misconduct has historically ranged from a written reprimand to a four-day suspension, and for a first offense of making a false and/or misleading statement during an official inquiry the penalty has ranged from a written reprimand to a nine-day suspension.

Whether progressive discipline is appropriate in any particular case is a matter within the discretion of the public agency. (*Talmo v. Civil Service Com.*, *supra,* 231 Cal.App.3d at pp. 229-230.) Moreover, when it comes to a public agency's imposition of punishment, "'there is no requirement that charges similar in nature must result in identical penalties.'" (*Id*. at. p 230.)

As the *Talmo* court noted, a law enforcement officer's "job is a position of trust and the public has a right to the highest standard of behavior from those they invest with the power and authority of a law enforcement officer. Honesty, credibility and temperament are crucial to the proper performance of an officer's duties. Dishonesty is incompatible with the public trust." (*Talmo v. Civil Service Com.*, *supra,* 231 Cal.App.3d at p. 231.) Police officers "'are the guardians of the peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them.' [Citation.]" (*Hankla v. Long Beach*

Civil Service Com. (1995) 34 Cal.App.4th 1216, 1224.) Given that appellant was found to be dishonest before a fact-finding tribunal and to have neglected his duty in failing to report officer misconduct, we cannot conclude that the penalty of discharge was such an abuse of discretion as to warrant reversal.

Judicial Notice Request

We deny respondents' request for judicial notice of the docket sheet filed in *People v. Cohan*, Los Angeles Superior Court, case No. BA215374. The information provided has no bearing on the issues raised by this appeal. Thus, judicial notice is inappropriate. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 87, fn. 5; *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063.)

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.

DOI TODD

We concur:

_____, Acting P. J.

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_____, J.

ASHMANN-GERST